

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

<p>JESSICA DENSON</p> <p>Plaintiff,</p> <p>v.</p> <p>DONALD J. TRUMP FOR PRESIDENT, INC.</p> <p>Defendant.</p>	<p>Case No. 2022 CA 001150 2</p> <p>Judge: None Assigned</p> <p>Next Event: None Scheduled</p>
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MOTION TO COMPEL COMPLIANCE WITH SUBPOENA

Plaintiff Jessica Denson (“Plaintiff”) has issued a lawful, properly domesticated and served subpoena *duces tecum* upon Stephen K. Bannon (“Bannon”) in furtherance of her lawsuit entitled *Denson v. Donald J. Trump for President, Inc.*, Index No. 101616/2017 before the Supreme Court, New York County, State of New York (the “New York Action”). Bannon was personally served with the subpoena on April 17, 2022. *See* 5/6/2022 Dkt. (Affidavit of Service). Bannon failed to comply with the subpoena. Plaintiff therefore respectfully seeks an order from the Court compelling documents from Bannon, requiring him to appear for a deposition taken virtually, and holding him in contempt.

FACTS

The New York Action is a sex discrimination case filed by Plaintiff against Donald J. Trump for President, Inc. (the “Campaign”) in 2017. *See* Exhibit A (Complaint). Bannon is purportedly a witness to the events in that complaint; he is named several times in the complaint. Ex. A at ¶¶11, 14, 17, 29(e), 33, 34.

On March 17, 2022, Plaintiff domesticated a subpoena from the New York Action before this Court, opening the current action. *See* 3/17/22 Dkt. The domesticated subpoena complies with all requirements of Rule 45. Marie Denson, who is not a party and is over the age of eighteen, served Bannon. *See* 5/6/2022 Dkt. Marie Denson completed that personal service on April 17, 2022, handing the subpoena to Bannon at 210 A Street NE, Washington, DC 20002. *Id.* Once Marie Denson personally handed the subpoena to Bannon, he almost immediately threw the subpoena on the ground, leaving it there. *See* Exhibit B at ¶6 (Affidavit of Jessica Denson).

Pursuant to the subpoena, Bannon was to produce documents by April 27, 2022, and was to appear virtually for a deposition on May 9, 2022. *See* 3/17/22 Dkt. As of the date of this motion, both of those dates have passed without compliance by Bannon. *See* Exhibit B at ¶7.

ARGUMENT

This Court is empowered to issue such an order to a third party who has declined to comply with a subpoena. *See, e.g., Sanchez v. Eads*, 2019 D.C. Super. LEXIS 60, *3. Further, Rule 45(f) permits the Court to “hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.” When the Court holds a person in contempt, attorney fees “should be the norm, for if the contemnor had obeyed the order of the court, the aggrieved party would not have required further assistance of counsel.” *See Federal Marketing Co. v. Virginia Impression Products Co.*, 823 A.2d 513, 529 (D.C. 2003) (quotation and citation omitted); *Schwartz v. Connors, Fiscina, Swartz & Zimmerfy*, 623 A.2d 595, 599 (D.C. 1993) (“The ‘American rule’ notwithstanding, the contemnor is ordinarily required to pay the aggrieved party's counsel fees, even in the absence of a finding of willfulness.”)

Here, Bannon was personally served with a lawful subpoena. The subpoena was in furtherance of discovery in the New York Action and permitted under Rule 45 and the Uniform Interstate Depositions and Discovery Act, D.C. Code §§ 13-441 to -448.

Bannon has failed to comply with the subpoena. First, Bannon failed to produce any responsive documents or to respond that no responsive documents are within his possession, custody or control. Second, Bannon failed to respond to the subpoena's demand for a virtual deposition. As made clear and obvious when he immediately threw the subpoena on the street, he had no intention of complying with the demand for his attendance at a virtual deposition. In these circumstances, no further effort by Denson was required to now move to compel Bannon's attendance, as any attempt to contact Bannon to provide a link to attend would have been futile. "[T]he law does not require the doing of a futile act." *Blyther v. Chesapeake & Potomac Tel. Co.*, 661 A.2d 658, 658 (D.C. 1995) (quoting *Ohio v. Roberts*, 448 U.S. 56, 74, 65 L. Ed. 2d 597, 100 S. Ct. 2531 (1980)). Further, given the public health emergency that continues to face us, a "virtual" deposition is an appropriate manner to hold a deposition.

Accordingly, Plaintiff respectfully requests an order from the Court compelling compliance by producing responsive documents by Bannon within twenty-one (21) days of this Court's order. Plaintiff further requests that this Court order Bannon compelling him to attend a deposition taken virtually on a date within thirty (30) days of this Court's order through a link to be filed in a praecipe in this action. Last, Plaintiff requests and order assessing expenses and attorneys' fees against Bannon. If this Motion is granted, undersigned counsel will file an attorney affidavit of costs within five business days.

CONCLUSION

For the reasons stated above, Plaintiff respectfully requests that the Court grant Plaintiff's motion and compel compliance with the subpoena by Bannon and to require the production of documents, to require his attendance at a deposition to be taken virtually, and order Bannon to pay expenses and attorneys' fees to Plaintiff.

RULE 12-I CERTIFICATION

As no counsel for Bannon has appeared in this matter or in the New York matter, agreement to the relief sought was not reached.

/s/ Christopher LaFon

Respectfully Submitted,

/s/ Christopher LaFon
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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Motion to be served on the 7th day of June, 2022 via CaseFileXpress and mailed via first-class mail to the individual named below:

Steven Bannon
210 A Street, NE
Washington, DC 20002

/s/ Christopher LaFon _____